



Ancient Monuments and Archaeological Areas Act 1979

1979 CHAPTER 46

PART I

ANCIENT MONUMENTS

Protection of scheduled monuments

2 Control of works affecting scheduled monuments.

- (1) If any person executes or causes or permits to be executed any works to which this section applies he shall be guilty of an offence unless the works are authorised under this Part of this Act [^{F1}or by development consent].
- (2) This section applies to any of the following works, that is to say—
 - (a) any works resulting in the demolition or destruction of or any damage to a scheduled monument;
 - (b) any works for the purpose of removing or repairing a scheduled monument or any part of it or of making any alterations or additions thereto; and
 - (c) any flooding or tipping operations on land in, on or under which there is a scheduled monument.
- (3) Without prejudice to any other authority to execute works conferred under this Part of this Act, works to which this section applies are authorised under this Part of this Act if—
 - (a) the Secretary of State [^{F2}or Historic Environment Scotland] has granted [^{F3}written] consent (referred to below in this Act as “scheduled monument consent”) for the execution of the works; and
 - (b) the works are executed in accordance with the terms of the consent and of any conditions attached to the consent.

Status: Point in time view as at 21/05/2016. This version of this provision has been superseded.

Changes to legislation: Ancient Monuments and Archaeological Areas Act 1979, Section 2 is up to date with all changes known to be in force on or before 22 June 2024. There are changes that may be brought into force at a future date.

Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

[^{F4}(3A) If works to which this section applies have been executed in relation to a scheduled monument situated in Wales or land in, on or under which there is such a scheduled monument without being authorised under this Part, and the Welsh Ministers grant consent for the retention of the works, the works are authorised under this Part from the grant of the consent.

(3B) References in this Act to scheduled monument consent (other than in section 4) include a reference to consent under subsection (3A).]

[^{F5}(3A) If—

- (a) works to which this section applies have been executed without being authorised under this Part; and
- (b) [^{F6}consent for the retention of the works is granted by the Scottish Ministers or by Historic Environment Scotland,]

the works are authorised under this Part of this Act from the grant of the consent.

(3B) References in this Act to scheduled monument consent include consent under subsection (3A) above.]

(4) Scheduled monument consent may be granted either unconditionally or subject to conditions (whether with respect to the manner in which or the persons by whom the works or any of the works are to be executed or otherwise).

(5) Without prejudice to the generality of subsection (4) above, a condition attached to a scheduled monument consent may require that

- [^{F7}(a) a person authorised by the Commission (in a case where the monument in question is situated in England), or
- (b) [^{F8}the Secretary of State][^{F8}Historic Environment Scotland] or a person authorised by [^{F8}the Secretary of State][^{F8}Historic Environment Scotland] (in any other case)]

be afforded an opportunity, before any works to which the consent relates are begun, to examine the monument and its site and carry out such excavations therein as appear to [^{F9}the Secretary of State][^{F9}Historic Environment Scotland] to be desirable for the purpose of archaeological investigation.

[^{F10}(5A) The conditions that may be attached to scheduled monument consent under subsection (4) include a condition reserving specified details of the works (whether or not set out in the application for consent) for subsequent approval by Historic Environment Scotland.]

[^{F11}(5A) In the case of a monument situated in Wales, the reference in subsection (3)(a) to the granting of written consent includes a reference to the granting of consent in such other manner as may be prescribed by the Welsh Ministers.

(5B) The Welsh Ministers may by regulations make provision as to the form and content of consent under this section in relation to a monument situated in Wales.]

(6) Without prejudice to subsection (1) above, if a person executing or causing or permitting to be executed any works to which a scheduled monument consent relates fails to comply with any condition attached to the consent he shall be guilty of an offence, unless he proves that he took all reasonable precautions and exercised all due diligence to avoid contravening the condition.

Status: Point in time view as at 21/05/2016. This version of this provision has been superseded.

Changes to legislation: Ancient Monuments and Archaeological Areas Act 1979, Section 2 is up to date with all changes known to be in force on or before 22 June 2024. There are changes that may be brought into force at a future date.

Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- [^{F12}(6A) In any proceedings for an offence under subsection (1) in relation to a monument or anything else on which interim protection is conferred (which is, as a result of section 1AB(2), treated as a scheduled monument or part of such a monument)—
- (a) it is a defence for the accused to prove that the accused did not know, and could not reasonably have been expected to know, that the interim protection had been conferred; and
 - (b) where the defence is raised by a person on whom a notice should have been served under section 1AA(2), it is for the prosecution to prove that the notice was served on the person.]
- (7) In any proceedings for an offence under this section in relation to works within subsection (2)(a) above it shall be a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid or prevent damage to the monument.
- (8) In any proceedings for an offence under this section in relation to works within subsection (2)(a) or (c) above [^{F13}which have been executed in relation to a scheduled monument situated in England or land in, on or under which there is such a scheduled monument] it shall be a defence for the accused to [^{F14}prove that][^{F14}show that, before executing, causing the execution of or, as the case may be, permitting the execution of the works—
- (a) he had taken all reasonable steps to find out whether there was a scheduled monument within the area affected by the works, and]
- he did not know and had no reason to believe that the monument was within the area affected by the works or (as the case may be) that it was a scheduled monument.
- [^{F15}(8A) In any proceedings for an offence under this section in relation to works within subsection (2)(a) or (c) which have been executed in relation to a scheduled monument situated in Wales or land in, on or under which there is such a scheduled monument, it is a defence for the accused to prove that, before executing the works or before causing or permitting their execution (as the case may be), the accused?—
- (a) had taken all reasonable steps to find out whether there was a scheduled monument in the area affected by the works; and
 - (b) did not know, and had no reason to believe, that the monument was within the area affected by the works or (as the case may be) that it was a scheduled monument.]
- (9) In any proceedings for an offence under this section it shall be a defence to prove that the works were urgently necessary in the interests of safety or health and that notice in writing of the need for the works was given to [^{F16}the Secretary of State][^{F16}Historic Environment Scotland] as soon as reasonably practicable.
- (10) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction or, in Scotland, on conviction before a court of summary jurisdiction, to a fine not exceeding [^{F17}the statutory maximum][^{F17}£50,000]; or
 - (b) on conviction on indictment to a fine.
- [^{F18}(10A) In determining the amount of any fine to be imposed on a person under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.]

Status: Point in time view as at 21/05/2016. This version of this provision has been superseded.

Changes to legislation: Ancient Monuments and Archaeological Areas Act 1979, Section 2 is up to date with all changes known to be in force on or before 22 June 2024. There are changes that may be brought into force at a future date.

Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (11) Part I of Schedule 1 to this Act shall have effect with respect to applications for,^{F19}the manner of granting, and the form, content] and the effect of, scheduled monument consent.

Textual Amendments

- F1** Words in s. 2(1) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\)](#), s. 241(8), **Sch. 2 para. 17** (with s. 226); [S.I. 2010/101](#), art. 2 (with art. 6)
- F2** Words in s. 2(3)(a) inserted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 5(a)** (with ss. 29, 30); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.
- F3** Word in s. 2(3)(a) repealed (S.) (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), **ss. 2(a)**, 33(2); [S.S.I. 2011/372](#), art. 2, Sch.
- F4** [S. 2\(3A\)\(3B\)](#) inserted (E.W.) (21.5.2016) by [Historic Environment \(Wales\) Act 2016 \(anaw 4\)](#), **ss. 6(1)**, 41(2)
- F5** [S. 2\(3A\)\(3B\)](#) inserted (S.) (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), **ss. 2(b)**, 33(2); [S.S.I. 2011/372](#), art. 2, Sch.
- F6** [S. 2\(3A\)\(b\)](#) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 5(b)** (with ss. 29, 30); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.
- F7** Words substituted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 27**
- F8** Words in s. 2(5)(b) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 5(c)** (with ss. 29, 30); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.
- F9** Words in s. 2(5) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 5(c)** (with ss. 29, 30); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.
- F10** [S. 2\(5A\)](#) inserted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 5(d)** (with ss. 29, 30); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.
- F11** [S. 2\(5A\)\(5B\)](#) inserted (E.W.) (21.3.2016 for specified purposes, 31.5.2017 in so far as not already in force) by [Historic Environment \(Wales\) Act 2016 \(anaw 4\)](#), **ss. 5(1)**, 41(1)(c)(3); [S.I. 2017/633](#), art. 5(b)
- F12** [S. 2\(6A\)](#) inserted (E.W.) (21.3.2016 for specified purposes, 31.5.2017 in so far as not already in force) by [Historic Environment \(Wales\) Act 2016 \(anaw 4\)](#), **ss. 3(2)**, 41(1)(c)(3); [S.I. 2017/633](#), art. 5(b)
- F13** Words in s. 2(8) inserted (E.W.) (21.5.2016) by [Historic Environment \(Wales\) Act 2016 \(anaw 4\)](#), **ss. 15(2)**, 41(2)
- F14** Words in s. 2(8) substituted (S.) (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), **ss. 3(2)**, 33(2); [S.S.I. 2011/372](#), art. 2, Sch.
- F15** [S. 2\(8A\)](#) inserted (E.W.) (21.5.2016) by [Historic Environment \(Wales\) Act 2016 \(anaw 4\)](#), **ss. 15(3)**, 41(2)
- F16** Words in s. 2(9) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 5(e)** (with ss. 29, 30); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.
- F17** Words in s. 2(10) substituted (S.) (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), **ss. 4(2)(a)**, 33(2); [S.S.I. 2011/372](#), art. 2, Sch.
- F18** [S. 2\(10A\)](#) inserted (S.) (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), **ss. 4(2)(b)**, 33(2); [S.S.I. 2011/372](#), art. 2, Sch.
- F19** Words in s. 2(11) inserted (S.) (30.6.2011 for specified purposes, 1.12.2011 in so far as not already in force) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), **ss. 15(4)**, 33(2); [S.S.I. 2011/174](#), art. 2, Sch.; [S.S.I. 2011/372](#), art. 2, Sch.

Status: Point in time view as at 21/05/2016. This version of this provision has been superseded.

Changes to legislation: Ancient Monuments and Archaeological Areas Act 1979, Section 2 is up to date with all changes known to be in force on or before 22 June 2024. There are changes that may be brought into force at a future date.

Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Modifications etc. (not altering text)

- C1** S. 2 excluded (18.12.1996) by 1996 c. 61, s. 12, **Sch. 7 para. 4(2)**
- C2** S. 2 excluded (22.7.2008) by Crossrail Act 2008 (c. 18), **Sch. 9 para. 4(2)**
- C3** S. 2(5)(b) savings for effects of 2014 asp 19, Sch. 2 para. 5(c) (S.) (1.10.2015) by The Historic Environment Scotland Act 2014 (Saving, Transitional and Consequential Provisions) Order 2015 (S.S.I. 2015/239), arts. 1(1), **4**
- C4** S. 2(8) savings for effects of 2011 asp 3 s. 3(2) (S.) (1.12.2011) by The Historic Environment (Amendment) (Scotland) Act 2011 (Saving, Transitional and Consequential Provisions) Order 2011 (S.S.I. 2011/377), arts. 1(1), **2(a)**
- C5** S. 2(9) savings for effects of 2014 asp 19, Sch. 2 para. 5(e) (S.) (1.10.2015) by The Historic Environment Scotland Act 2014 (Saving, Transitional and Consequential Provisions) Order 2015 (S.S.I. 2015/239), arts. 1(1), **5**

Status:

Point in time view as at 21/05/2016. This version of this provision has been superseded.

Changes to legislation:

Ancient Monuments and Archaeological Areas Act 1979, Section 2 is up to date with all changes known to be in force on or before 22 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.